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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/998,507	12/26/1997	ALBERT BAUER	1704345	2665

7590 12/03/2001

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EXAMINER

FORD, JOHN K

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/03/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/998,507

Applicant(s)

Bauer

Examiner

Ford

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-1-01
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-63 is/are pending in the application.
- 4a) Of the above claim(s) 47-50, 61 and 63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-46, 51-59 is/are rejected.
- 7) ☒ Claim(s) 60 & 62 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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Applicant's election of the first species (exhaust air motor regulated in dependence on Outside air temperature), without traverse, is acknowledged. Claims 44, 45, 46, 51-60, 62 and 63 are deemed readable on the elected species, by applicant. Claims 47-50 and 61 are withdrawn as being directed to the non-elected species. In addition, the examiner withdraws claims 63 as it depends from nonelected claim 61.

Regarding whether not the ^{Examiner intended the species requirement to apply to the} exhaust motor (as opposed to the supply motor), the Examiner maintains the reference to the exhaust motor is proper. See page 3, lines 1-16 of the substitute specification filed April 9, 2001.

Please cancel, formally, claims 5, 6, 8, 37, 39, 41 and 42 in response to this action. These claims were never canceled and counsel appears to be under the impression that they have already been canceled.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44 and 51-59 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Johannsen (4,257,318).

See col. 2, lines 3-15 and Figure 5, in particular.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44 and 51-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 44 and 51-59 above, and further in view of Rayburn et al. (5,971,067).

Rayburn discloses in Figure 2, and col. 7, lines 1-12 how conventional zone air-volume controllers work. The explanation in Johannsen is quite abbreviated, however it is clear from the state of the ~~art~~^{art} that Johannsen is disclosing a variable air volume system such as shown by Rayburn and, to the extent that it is necessary, it would have been obvious to have used Rayburn's room temperature controlled dampers in Johannsen.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claim 44 above, and further in view of Benton et al. (4,347,712).

To vary supply air temperature of Johannsen in the manner taught by Benton to save energy would have been obvious to one of ordinary skill.


Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claim 44 above, and further in view of Robinson (4,189,094).

Robinson teaches varying the amount of ventilation of a building responsive to outdoor temperature. To have varied the pressure set point of the supply fan to increase the fan speed of Johannsen in response to outdoor temperature as taught by Figure 3 of Robinson to save energy would have been obvious to one of ordinary skill.

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Claims 60 and 62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.



John K. Ford
Primary Examiner

J. Ford

October 26, 2001